No. 87-1787

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1987

CITY OF LONG BEACH,
Petitioner,

vs.

SOUTHWEST AIRCRAFT SERVICES, INC.,
Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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STATEMENT OF CASE

On June 1, 1971, the City of Long Beach ("Petitioner") and Bob's entered into a lease (hereinafter the "lease") whereby Bob's Aircraft and Industrial Cleaning Co., Inc. ("Bob's") leased certain business premises located at the Long Beach Airport for a period of twenty-five (25) years. At this time, the lease term has approximately eight (8) years remaining. In compliance with the lease's requirements, Bob's improved the premises with a concrete and asphalt-covered washrack facility for washing, stripping paint from, painting, cleaning and maintaining aircraft.

On January 31, 1976, Bob's assigned its interest in the lease to Southwest Aircraft Services, Inc. ("Respondent"). By the assignment, Respondent agreed to assume Bob's obligations under the lease. Petitioner consented to the assignment but did not release Bob's from its obligations under the lease.

Respondent's normal business activities require the spraying of various chemicals on airplanes which cannot be accomplished without some overspray travelling onto adjoining property. From 1971, when the lease was first entered into, until 1982, the adjoining property was vacant or used for purposes which would not result in injury by the overspray. In 1982, the City leased the adjoining properties to Aerolease-Long Beach and thereafter, by sublease, to Atlantic Aviation Corporation ("Atlantic") for the purpose of developing a new jet facility at the airport.

The new jet facility's operation is entirely inconsistent with the continued operation of respondent's business because of the inevitable overspray. As a result, Atlantic commenced an action seeking to enjoin Respondent from spraying airplanes on its premises and Respondent commenced two actions against Petitioner seeking damages for inverse condemnation. Not only has the change in use of the adjoining property made Respondent's business inconsistent with its new neighbors, it has also made Respondent's leasehold more valuable and the termination of the lease of significant interest to Petitioner. The termination of the lease will permit the further development of the jet facility onto Respondent's present premises. Thus, the effect of an order rejecting the lease and deeming it terminated would be to grant a considerable windfall to Petitioner which, given Respondent's continued willingness to pay all of the accrued rent under the

lease, Petitioner would not be entitled to receive but for the effect of such an order.

On April 18, 1985, Respondent commenced its Chapter 11 case by filing a voluntary petition for relief. Prior to the commencement of its Chapter 11 case, Respondent had paid the monthly rental due under the lease for the periods through and including the month of February 1985 and had tendered checks in payment of the March and April rent. However, after the commencement of the Chapter 11 case, the checks for the March and April rent were returned to Petitioner not honored because the account upon which they were issued was closed at the commencement of the case and all the funds were transferred to new accounts established in the name of the Chapter 11 estate. Respondent did not make any payments to Petitioner after the commencement of the Chapter 11 case as a result of a misunderstanding as to its obligation in this regard.

On June 14, 1985, Respondent filed its Motion to Extend Time to Assume or Reject Executory Contracts and Unexpired Leases ("Motion to Extend Time") whereby it sought to extend the time within which it could assume or reject the lease for a period of 180 days after June 17, 1985, the sixtieth day following the filing of the Chapter 11 case. A hearing on the motion was held on July 17, 1985. At that hearing, both Bob's and Respondent tendered payment of all outstanding rental payments then due under the lease. However, the City rejected these tenders. The bankruptcy court ruled that it lacked authority to grant the Motion to Extend Time after sixty days from the commencement of the Chapter 11 case even though the motion seeking such relief had been filed within that sixty day period. The Bankruptcy Appellate Panel for the Ninth Circuit affirmed this deci-

sion. However, the Ninth Circuit Court of Appeals reversed.

The Ninth Circuit Court of Appeals held that if cause to extend the time to assume or reject a lease arises within the sixty day period and a motion is made within that period, the bankruptcy court may grant the extension even after the sixty days has expired. It is this decision which Petitioner seeks to have reviewed by the grant of the present Petition for Writ of Certiorari (the "Petition").

SUMMARY OF ARGUMENT

The Petition notably fails to cite Rule 17 of the Rules of the Supreme Court. A review of the Petition makes the reason for this omission clear; none of the special and important reasons required by the Rule for granting the petition exist in this case. The decision of the Ninth Circuit Court of Appeals determined the purely procedural issue of whether a timely filed Chapter 11 trustee's or debtor-in-possession's motion to extend the time to assume or reject a lease of nonresidential real estate must be determined by the court within sixty days after the commencement of the case or, as the lower court decided, such a motion could be ruled upon by the Court, if filed within the sixty days and establishing cause for an extension arising within that time, although heard thereafter.[1]

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[1]Section 365(d)(4) provides as follows:

"Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed

The Ninth Circuit Court of Appeals decided the case as a matter of first impression and is the only Court of Appeals to have considered the issue. Thus there is no conflict between the circuits. Moreover, the only other appellate decisions interpreting the code section, which are district court decisions, are consistent with the decision below. Thus, there is not even a conflict of any appellate law at issue.

The only grounds for granting the Petition asserted by petitioner are that the Ninth Circuit Court of Appeals allegedly failed to adhere to this Court's prior decisions concerning the proper method to interpret statutes and that the circuit's new method of construction, if applied to eliminate other time frames in the Bankruptcy Code, 11 U.S.C. § 101 *et seq.,* will disrupt the administration of bankruptcy cases.

The Petitioner is wrong in these assertions. The Ninth Circuit Court of Appeals followed well established precedent in interpreting Section 365(d)(4) of the Bankruptcy Code, 11 U.S.C. § 365(d)(4). Petitioner believes that the statutory language required no interpretation and that, therefore, to resort to legislative history was inappropriate. However, the rule of strict construction it espouses is erroneous for several reasons. First, the statutory language is ambiguous and susceptible to various interpretations thus requiring resort to extrinsic sources to determine congressional intent. Second, even in the absence of any ambiguities this Court's prior precedents, both those cited by Petitioner and others, permit a court to examine legislative history as well as other sources to ascertain if the statutory language reflects the legislative purpose and intent. Finally, the legislative history, in-

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rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

cluding that to which Petitioner points, establishes that the purpose of the statute, to provide certainty to landlords while protecting the bankruptcy estate's need to investigate and preserve its assets, is carried into effect by the rule adopted below but would be frustrated by Petitioner's interpretation. The Ninth Circuit's recognition of the requirement that a motion to extend the time to assume or reject a lease must be filed and served within the sixty day period after the commencement of the case insures that the landlord will have the prompt notice of the trustee's or debtor's intent. Thus, the certainty which Congress desired, as evidenced by the legislative history, is accomplished by the interpretation of the statute adopted by the decision below.

Petitioner's attempt to broaden the scope of the decision below to effect other time limits in the Bankruptcy Code is a thinly disguised effort to make the decision of greater moment than is merited by the facts of the case, the language of the decision or the court's holdings. This slippery slope argument ignores the actual holding and the court's analysis as well as the obvious distinctions between the different statutes, circumstances, legislative histories and congressional purposes involved. The decision does not in any way impact on the other statutes cited and none of the issues thus raised would be before this Court on review.

ARGUMENT

A. This Petition Raises No Special And Important Reasons For The Court To Exercise Its Discretion To Grant Certiorari.

Review of the decision in this matter by writ of certiorari is a matter solely within the Supreme Court's discre-

tion and a petition for writ of certiorari should be granted only upon a showing of a need for the Court to exercise its role as the ultimate arbiter of the nation's laws. Thus, certiorari should be granted only when the petition raises issues the resolution of which are of significant importance to the public as distinct from the parties. *Rice v. Sioux City Memorial Park Cemetery, Inc.,* 349 U.S. 70 (1955). As the court explained in the *Rice* opinion,

> "A federal question raised by a petitioner may be 'of substance' in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants . . .
>
> 'Special and important reasons' imply a reach to a problem beyond the academic or the episodic."

Id. at 74 (citations omitted).

The court in *Rice* concluded its opinion with the following quote from Judge Taft:

> "[I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals. *Layne & Bowler Corp. v. Western Well Works, Inc.,* 261 U.S. 387, 393, 43 S.Ct. 422, 423, 67 L.Ed. 712."

Id. at 79.

These considerations are embodied in the Rules of the Supreme Court, Rule 17. That rule provides as follows:

"Rule 17. Considerations Governing Review on Certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari."

The language of this rule governing the circumstances under which review by certiorari is appropriate has remained essentially unchanged for over 60 years. The principles which are embodied in it have guided the Court's exercise of its discretionary power of review in order to shape the body of Supreme Court decisions around those issues which impact on the development of national law and involve principles of significant public interest. Yet the Petitioner in this case has neither cited the rule nor pointed to a single "special and important reason" for granting certiorari, whether of the kind illustrated in the rule or otherwise. The reason for this omission is obvious; while the Ninth Circuit Court of Appeals' decision is of significant importance to Petitioner in that it prevents it from reaping the windfall described hereinabove, no issue of national importance is raised in that decision. The decision determines the manner of application of a time deadline to a minor procedural issue in federal bankruptcy practice. Simply put, the Court of Appeals has decided that a motion seeking an extension of time must be filed and cause for the extension must exist by a date certain but the bankruptcy court can decide the motion, within its normal procedures for controlling its calendar, after that date. Notwithstanding Petitioner's protestations, neither the consistent administration of federal bankruptcy law nor the foundations of statutory interpretation have been threatened by this result. Rather, the Ninth Circuit Court of Appeals adopted a rule of sufficient certainty to provide consistent administration of the law through an exercise of statutory construction well within the precedents of this court.

B. The Decision Below Raises No Conflict Between The Circuit Courts Of Appeal.

The decision below is the only decision yet issued by any of the Circuit Courts of Appeal on the issue of the interpretation of the provisions of 11 U.S.C. § 365(d)(4) concerning the time limitation for the filing and determination of a motion to extend the time to assume or reject a lease. Indeed, the Ninth Circuit Court of Appeals is also the only Circuit to address the closely related issue of the effect of the section on a motion to assume filed within sixty days but decided after the time limit. *In re Victoria Station, Inc.,* 840 F.2d 682 (9th Cir. 1988). Thus, there exists no conflict between the Circuits which would present a need for resolution by this Court in order to insure a uniform application of federal law.

Moreover, the only decision by any courts acting in an appellate capacity are consistent with the decision below. In *In re By-Rite Distributing, Inc.,* 55 Bankr. 740 (D. Utah 1985) District Judge Jenkins reviewed the holding of the bankruptcy court previously relied upon by the Bankruptcy Court in the present case. The district court's decision, which is consistent with *In re Victoria Station, Inc., supra,* held that 11 U.S.C. § 365(d)(4) did not require approval of a motion to assume a lease within sixty days from the commencement of the case if the motion was filed within that time. Similarly, in *Tigr Restaurant, Inc., v. Rouse S.I. Shopping Center, Inc.,* 79 Bankr. 954 (E.D. N.Y. 1987). District Judge Dearie acting in an appellate capacity, reversed the bankruptcy court and held that subsequent extensions of the time to assume or reject were allowed if motions were filed within the time of earlier, properly granted extensions.

Thus, every appellate court considering the section in question has interpreted it consistently with the decision

below to require a motion which is filed within sixty days to be decided by the bankruptcy court after that time. The only conflicting decisions are at the trial court level and certainly raise no issue of national importance to be resolved by this court. *See, Cleveland Board of Education v. La Fluer,* 414 U.S. 632, 638-639 n.8 (1974); *Ward v. Illinois,* 431 U.S. 767, 770-771; (1977); *Calhoon v. Harvey,* 379 U.S. 134 (1964).

C. The Decision Below Does Not Decide An Important Question Of Federal Law In A Manner Conflicting With The Prior Decisions Of This Court.

The Petitioner does not directly assert either that the Ninth Circuit's holding raises an undecided substantial issue of federal law which should be determined by this court or that it is in conflict with prior decisions of this court. Rather the asserted reasons for granting the Petition are to correct what Petitioner describes as the formulation of a supposedly new cannon of statutory construction which if applied to other provisions of the Bankruptcy Code not here at issue, will have a disruptive effect. However, neither of Petitioner's premises is viable.

The Ninth Circuit Court of Appeals followed long settled legal principles of interpretation in reaching its decision. The "slippery slope" of disrupted bankruptcy administration which Petitioner forsees is simply the untenable misinterpretation and misapplication of the principles upon which the lower court's decision was based.

The only conflict with this Court's decisions pointed out by Petitioner is a supposed disregard for the proper method of statutory construction. Petitioner's argument is that Congress' intent may be determined solely by reference to the language of the statute itself and that

reference to any extrinsic source, including legislative history, to determine that intent was improper. However, Petitioner's position in this regard is erroneous in two respects.

First, as the decision below points out, the statutory language is not free from ambiguity. It is susceptible to multiple meanings as a result of the placement and punctuation of the modifying clause "within such 60-day period." It is unclear simply from the statute's language whether the clause modifies the time period during which cause for extension must exist or the period within which the court must act, or both. If the first meaning were intended, it would have better been expresed by omitting the comma following the word "cause." If the second meaning is correct, the phrase would best be placed after the work "fixes." If the phrase was meant to condition both the existence of cause and the entry of the court's order, the word "fixes" would better have been placed after "court." In any event, while one can argue which of the available interpretations is "stronger", this is not a case where Petitioner's "plain meaning" rule could apply.

More importantly, this Court's prior decisions do not enunciate the strict literalist approach presented by Petitioner. Neither the cases cited in the Petition nor the balance of the vast body of Supreme Court precedent addressing statutory construction adopt a rule which precludes seeking the intent of Congress from sources other than the language of the specific code section at issue. Indeed, such a position has been specifically rejected by this Court. *Train v. Colorado Public Interest Research Group,* 426 U.S. 1 (1976). In that case the Ninth Circuit Court of Appeals, regarding the statutory lan-

guage as unambiguous, did not concern itself with legislative history. This Court reversed stating:

> "To the extent that the Court of Appeals excluded reference to the legislative history of the FWPCA in discerning its meaning, the court was in error. As we have noted before: 'When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' "

Id. at 9.

Indeed, in each of the cases relied upon by Petitioner, many of which were relied upon by the court below, the Supreme Court did review sources of legislative intent beyond the statutory language concluding from those materials that the congressional purpose was reflected in the language used. The cases cited do not stand for the proposition asserted by Petitioner that no such review is permitted. *See, e.g., INS v. Cardoza-Fonseca,* 107 S.Ct. 1207, 1213 n.12 (1987); *United States v. James,* 106 S.Ct. 3116, 3121 (1986); *Bethesda Hosp. Ass'n v. Bowen,* 108 S.Ct. 1255, 1259. Rather, the proper method of statutory analysis, which was the course followed by the Ninth Circuit Court of Appeals in this matter, was explained by the Court in *Watt v. Alaska,* 451 U.S. 259 (1981) as follows:

> "We agree with the Secretary that '[t]he starting point in every case involving construction of a statute is the language itself.' *Blue Chip Stamps v. Manor Drug Stores,* 421 U.S. 723, 756, 95 S.Ct. 1917, 1935, 44 L.Ed.2d 539 (1975) (POWELL, J. concurring). *See, Rubin v. United States,* 449 U.S. 424, 1010 S.Ct. 698, 66 L.Ed.2d 633 (1981). But ascertainment of the meaning apparent on the face of a single statute

need not end the inquiry. *Train v. Colorado Public Interest Research Group,* 426 U.S. 1, 10, 96 S.Ct. 1938, 1942, 48 L.Ed.2d 434 (1976); *United States v. American Trucking Assns., Inc.,* 310 U.S. 534, 543-544, 60 S.Ct. 1059, 1063-1064, 84 L.Ed. 1345 (1940). This is because the plain-meaning rule is 'rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists.' *Boston Sand Co. v. United States,* 278 U.S. 41, 48, 49 S.Ct. 52, 54, 73 L.Ed. 170 (1928) (Homes, J.). The circumstances of the enactment of particular legislation may persuade a court that Congress did not intend words of common meaning to have their literal effect." E.g., *Church of the Holy Trinity v. United States,* 143 U.S. 457, 459, 36 L.Ed. 226 (1892); *United States v. Ryan,* 284 U.S. 167, 175, 52 S.Ct. 65, 68, 76 L.Ed. 224 (1931).

"Sole reliance on the 'plain language' of § 401(a) would assume the answer to the question at issue." *Id.* at 265. (footnote omitted)

The Supreme Court has held that a court has a duty to look beyond the language of a statute where a literal reading would produce absurd, unintended, or manifestly unjust results. In the case of *Rector, Etc., of Holy Trinity Church v. U.S.*, 143 U.S. 457, 460 (1892), the Supreme Court stated as follows:

"If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity."

The Supreme Court went on to state as follows:

"[A]nother guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the court properly looks at contemporaneous

> events, the situation as it existed, and as it was pressed upon the attention of the legislative body." 143 U.S. at 513.

In the case of *U.S. v. American Trucking Assns.*, 310 U.S. 534, 542 (1940), the Supreme Court expanded upon the function of a court in construing statutory language where literal adherence would be absurd, futile, or unreasonable:

> "In the interpretation of statutes, the function of the courts is . . . to construe the language so as to give effect to the intent of Congress. . . . Often [the] words [of the statute] are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act . . . [*E*]*ven when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose rather than the literal words.*" *Id.* (emphasis in original.)

The Supreme Court reaffirmed the holdings of *Holy Trinity* and *American Trucking* in its decision in *Perry v. Commerce Loan Co.*, 383 U.S. 392, 400 (1966), and those decisions have been consistently adhered to by courts when confronted by statutory language found to produce absurd, unintended or unreasonable results.

The Ninth Circuit Court of Appeals construction of 11 U.S.C. § 365(d)(4) in this case is consistent with the congressional intent in enacting the statute. *In re Unit Portions of Delaware, Inc.*, 53 Bankr. 83 (Bankr. E.D.N.Y. 1985); *In re Musikahn Corp.*, 57 Bankr. 938 (Bankr.

E.D.N.Y., 1986); *Tigr Restaurant, Inc. v. Rouse S.I. Shopping Center, Inc., supra.* The legislative history of Section 365(d)(4) indicates that the problem the section "would remedy is the long-term vacancy or partial operation of space by a bankruptcy tenant." 130 Cong. Rec. S-8894-95 (remarks of Senator Hatch) reprinted in U.S. Code Cong. & Admin. News 599 (1984). The section was designed to eliminate the extended period of uncertainty as to the debtor's intention which could exist under prior law and was originally directed at shopping center lease. Although expanded to all nonresidential leases, the section was not designed to provide landlords with protection from every adverse consequence of a tenant's bankruptcy. *See, In re By-Rite Distributing, Inc.*, 55 Bankr. 740 (Bankr. D. Utah 1985).

As the bankruptcy court in *In re Unit Portions of Delaware, Inc., supra*, stated:

> "By requiring the trustee to make a decision concerning the lease within the 60-day period, or show cause why he needs additional time to do so, the statute protects adverse parties against delays caused by the trustee's failure to investigate whether the lease should be assumed. *No possible statutory purpose is served by terminating the estate's interest in the lease merely because the court could not hear or decide the issue within the 60-day period.*
>
> "*A trustee who has requested a hearing for an extension of time within the prescribed period, and who makes a prima facie case of his need for the additional time has done all he can to obtain the extension. It would be absurd to deny his request and cause the estate to forfeit a potentially critical asset merely because the trustee's motion was not decided until after the expiration of the 60-day period. The*

> *court finds no evidence in the legislative history or in the overall statutory scheme to indicate Congress intended such a result.*" 53 Bankr. at 85 (emphasis added, citations omitted).

The conclusion reached by the court in *Unit Portions of Delaware, Inc., supra,* was agreed with by the United States District Court for the District of Utah in its decision reversing the Bankruptcy Court decision primarily relied upon by the City, and the Bankruptcy Court in this case. The District Court in *In re By-Rite Distributing, Inc., supra,* held as follows:

> "The bankruptcy court's interpretation of section 365(d)(4) would actually defeat the stated legislative intent by giving the trustee *less* than the full sixty days to make up his mind. If the trustee has to get court approval within the sixty days, he would have to decide whether or not to assume the lease and file his motion for assumption much earlier, to allow time for the required notice, the filing of any objections and the required hearing. *See* Bankruptcy Rule 6006. In complex cases especially, such a requirement would unduly tax the trustee, who must also calculate assets and debts, determine creditors and file schedules soon after the filing of the petition. The result would likely be that trustees would routinely file for extensions of the sixty-day period, leading to the very evil that section 365(d)(4) was meant to cure — costly delay." 55 Bankr. at 745 (emphasis in original).

See also, In re Burns Fabricating Co., 61 Bankr. 955 (Bankr. E.D. Mich. 1986).

While petitioner might wish congressional intent to have been to provide lessors with every protection con-

ceivable, the scope of Section 365(d)(4) is not so broad. As the court below recognized, the section's intent was to provide certainty to the relationship between landlords and tenants in bankruptcy cases, while preserving the estate's ability to demonstrate a need for additional time to assume valuable leasehold interests which might be crucial to a reorganization. The decision of the Ninth Circuit Court of Appeals properly ascertained and implemented that intent.

D. Rather Than Disrupt The Bankruptcy System, The Decision Of The Lower Court Will Promote Administration Of Cases Consistent With Congressional Intent.

Petitioner, apparently in an effort to elevate to a level of national importance a dispute actually concerning the purely procedural issue of the scheduling of hearings, raises the specters of increased uncertainty for lessors and a host of as yet unvisited evils in other areas of bankruptcy law unrelated to the present case. The petitioner's arguments in this regard misconstrue the decision below in order to create uncertainties where none exist and attribute to the lower courts an unfounded predilection toward destructiveness not evident in this or other decisions. The parade of horribles predicted by petitioner are neither mandated by the holding of the decision sought to be reviewed nor are they foreseeable based upon the lower court's analysis.

With respect to the decision's actual holding that the bankruptcy court may determine a motion for an extention filed within sixty days of the commencement of the case after the expiration of that time, petitioner asserts that the congressional purpose of providing certainty for landlords is frustrated because "any debtor or trustee

who misses or miscalculates one of these time limits may seek to avoid the consequences of its own inaction." Petition, p. 18. However, the Ninth Circuit Court of Appeals' holding does not create any such risk. The opinion requires the motion to be served and filed within the sixty day period. Thus, the landlord must receive notice of the debtor's or trustee's intention within the sixty day time frame as Congress envisioned. In the unlikely event that the hearing on the motion is unduly delayed by the debtor, the Ninth Circuit Court of Appeal's decision, at worst, shifts the obligation to advance the hearing date to the landlord. However, the notice procedure adopted is precisely analogous to the legislative history accompanying the enactment of the section and to that of prior versions recited at page 14 of the Petition. The landlord will receive notice within the first sixty days of the trustee's or debtor's intentions.

The supposed impact of the decision on Sections 108, 362 and 1124 of the Bankruptcy Code, 11 U.S.C. §§ 108, 362 and 1124, is simply specious. The decision has no impact on those sections whatsoever. The statutory language, legislative history and related statutory framework are entirely distinct from that considered below. Those sections were enacted as a part of the original Bankruptcy Reform Act of 1978, not the Bankruptcy Amendments and Federal Judgeship Act of 1984 and reflect entirely distinct statutory language, legislative purposes and goals. Petitioner's attempt to read the decision below as affecting these sections is simply an attempt to distort the decision's scope beyond any warranted by the pertinent facts, the lower court's holding or the language used in order to magnify the decisions supposed impact and thus the importance of review. This effort should be rejected.

CONCLUSION

The petition demonstrates no special and important reasons for granting review by certiorari in this case. The issue of the scheduling of hearings on motions to extend the time to assume or reject leases in bankruptcy cases is not inherently of national importance and there is no conflict among the circuits.

Moreover, the Ninth Circuit Court of Appeals neither adopted a new method of statutory construction in the abstract nor did it apply existing precedent erroneously. Rather, it properly ascertained Congressional intent and adopted a rule effectuating that intent. The decision below provides a rule of certainty and fairness which requires no further review. Therefore, the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit filed on behalf of the City of Long Beach should be denied.

DATED: May 26, 1988

Respectfully submitted,

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By RICHARD K. DIAMOND
Attorneys for Respondent

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On May 26, 1988, I served the within Opposition To Petition for Writ of Certiorari in re: "City of Long Beach vs. Southwest Aircraft Services, Inc." in the United States Supreme Court, October Term 1987, No. 87-1987;

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

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All parties required to be served have been served.

I certify, under penalty of perjury, that the foregoing is true and correct.

Executed on May 26, 1988, at Los Angeles, California

Ce Ce Medina

CE CE MEDINA